

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 6, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on May 6, 2005, beginning at 10:00 a.m. The meeting was tape-recorded and the tape is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commission Member Ricky Wright were present at the meeting. Commission Member Mike Joyner joined later via teleconference.

MINUTES OF APRIL 8, 2005 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the April 8, 2005, meeting into the record. Seconded by Commissioner Wright. So ordered. Chairman Fox made a motion to approve the minutes from the April 8, 2005, meeting. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright replied that he found no conflicts of interest. Chairman Fox recused himself from ruling on the following cases:

Hearing Case #10 – G Spot Mini Mart
Carry Over Case #52 – Gas Center 2
Carry Over Case #53 – Han Dee Hugos 28
Carry Over Case #54 – Olive or Twist
Carry Over Case #55 – Scotchman 83
Carry Over Case #56 – Scotchman 126
Carry Over Case #57 – Sonnys at the Beach
Carry Over Case #58 – T Bonz Tavern
Carry Over Case #59 – Value Exp 2
Carry Over Case #60 – Wilco 391
1st Offense Case # 14 – Han Dee Hugos 29

Commissioner Wright made a motion to ratify the above-mentioned cases. Seconded by Commissioner Joyner, via teleconference. So Ordered.

I. HEARING CASES - 60 Listed

Assistant Counsel K. Renee Cowick provided information to the Commission regarding Hearing Case #50 – Gallery Cafe. She stated that this case had come before the Commission last month. The permittee's wife had called her and asked if the case could be reconsidered. Mr. Hines stated that he has a combination café and art gallery located in an old historic building, called Gallery Café. Mr. Hines went on to state that they had malt beverage and unfortified wine permits. His wife does the cooking there and sometimes uses alcohol in her cooking. He further stated that he didn't

know that he needed to have a Culinary Permit in order to use alcohol in cooking. His wife regularly makes a Jack Daniels Chocolate Decadent Cake and uses Jake Daniels to marinate the raisins and they are then cooked into the cake. Periodically she uses Rum, to make Rum Bread and Bread Pudding, Raspberry De amore' Liquor to make Raspberry Chocolate Torte, Margarita Mix to make Margarita Chicken Breast and Martini Rossi Vermouth that she uses in Snapper soup. Mr. Hines stated that he had questioned her about having the alcohol there since they didn't have a Culinary permit and she told him that it wasn't like they were serving it to customers, its being used as an ingredient and is cooked off in the cooking process. Mr. Hines stated that he didn't know that there was a Culinary permit and that he needed that. All of the alcohol used in the cooking of the food was confiscated and they no longer serve those foods. The Jack Daniels Chocolate Decadent Cake is made at home and brought in. Mr. Hines asked the Commission for some consideration since they were a fairly new business and that they were "hanging on by their finger nails".

Chairman Fox asked Mr. Hines how long they had been in business. Mr. Hines stated that they had only been in business for about two and half years. Chairman Fox asked Chief Deputy Counsel Fred Gregory if there was a Culinary permit. Mr. Gregory stated that there was a Culinary permit.

Chairman Fox made a motion to waive the penalty on the stipulation that Mr. Hines get in contact with Danny Sellars and arrange an ABC training class with Alcohol Law Enforcement and get a Culinary permit. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Mr. Paul Thompson, owner of Big Harry's Tavern was asking for reconsideration. This was case #14 on last month's agenda. Mr. Thompson stated that he didn't ask for a hearing because he had received some really bad information from some other permit holders. He was told that if he did appear before the Commission and the Commission ruled in his favor that he would have Alcohol Law Enforcement and Alcohol Beverage Control all over him until they found something. After having spoken to Assistant Counsel LoRita Pinnix, Mr. Thompson learned that he had nothing to fear and could come before the Commission and state what happened in this case.

Mr. Thompson went on to explain that he had been in business four years and had never had a violation. He was having a Christmas party at the club on Saturday December 18, 2004 and had hired a bartender a couple of weeks prior who had worked at a club up the street where they regularly sold jello shooters. On the next day, Sunday December 19, 2004, they were having a fundraiser at the club and he was at home. The bartender called him at home and asked him if she could make jello shooters as a novelty. Mr. Thompson stated that he told her that she could. An Alcohol Beverage Control Officer came in and Mr. Thompson said that he was called and told there was a problem. He instructed his manager to take the jello shooters out of the club. On the next day Mr. Thompson stated that he called the club owner up the street and was reminded of the requirement of having a recipe on file with the Commission. He went on to state that when he spoke with the ABC Officer, he admitted that he had been told that there needed to be a recipe on file, but he had forgotten.

Mr. Thompson further stated that when he had bought the business it was a seedy and run-down place. He had borrowed \$30,000.00 to upgrade the club and had turned it in to a respectful business. He said that he had expected to get some kind of penalty, but in light of what happened and how it had occurred, he thought that he would get a warning of some kind. He asked the Commission for some consideration. He went on to state his club policy that if anyone had too much to drink, the club would pay for the cab fare home and back to their car if needed and they don't have to reimburse the club.

Chairman Fox asked Mr. Thompson how many members he had. Mr. Thompson stated he was incorporated and they just started over the first of the month, but they have 1,780 members.

Chairman Fox also asked Mr. Thompson who was their clientele. Mr. Thompson stated that they have mostly have retired military, like himself, in the daytime and early evening and musicians on the weekends.

Commissioner Wright made a motion to amend the final agency decision and issue a written warning on the stipulation that he get in contact with Danny Sellars and arrange an ABC training class. Seconded by Chairman Fox. So Ordered.

Assistant Counsel LoRita Pinnix stated that she had an additional case to bring before the Commission. Underground Lounge was case #48 on the April Commission agenda and the permittee was asking for reconsideration. Ms. Pinnix stated that Ms. Brown called and said that she had forgotten that her suspension started on May 6, 2005 and she had already scheduled a birthday party and a reception for May 7, 2005. Ms. Brown asked that Commission allow the suspension to start on May 9, 2005.

Chairman Fox asked Ms. Pinnix when Ms. Brown had called and had she received the Final Agency Decision in an orderly fashion. Ms. Pinnix stated that Ms. Brown had called her on May 5, 2005 and she had received the order on time.

Chairman Fox made a motion to amended the order and for the suspension to start May 9, 2005. Seconded by Commissioner Wright. So Ordered.

Assistant Counsel Renee Cowick stated that she had a case to bring before the Commission. Ms. Cowick stated that she had received a letter from Trade Mart 48, which was case #28 on last month's agenda. In the letter Mr. Walter Williams, president of Trade Mart, stated that the store had weak management and weak supervision, but none of those employees were no longer employed at the store. Ms. Cowick went to state that Mr. Williams asked that the five-day active suspension be waived. Ms. Cowick also stated that the letter was dated April 13, 2005, and the Legal Division received it on April 18, 2005. The April Commission Hearing was April 8, 2005.

Commissioner Wright made a motion to let the suspension stand. Seconded by Chairman Fox. Chairman Fox also added that per the letter from Mr. Williams, he had advised his district manager to attend a training class. So Ordered.

Chairman Fox made a motion to approve the Offers in Compromise for the balance of the hearing cases, with the exception of Hearing Case #10 – G Spot Mini Mart, Carry Over Case #52 – Gas Center 2, Carry Over Case #53 – Han Dee Hugos 28, Carry Over Case #54 – Olive or Twist, Carry Over Case #55 – Scotchman 83, Carry Over Case #56 – Scotchman 126, Carry Over Case #57 – Sonny's at the Beach, Carry Over Case #58 – T Bonz Tavern, Carry Over Case #59 – Value Exp 2 and Carry Over Case #60 – Wilco 391, which were ratified earlier. Seconded by Commissioner Wright. So Ordered.

II. FIRST OFFENSE CASES – 27 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on May 6, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. 601 Food Mart – 2412 Concord Hwy., Monroe, NC 28110
2. Country Food Stores 5 – 803 Montreat Road, Black Mountain, NC 28711
3. Discount Convenience 9 – 1404 US Hwy 70, Swannanoa, NC 28778
4. Fair Haven Mini Mart – 9404 Walker Street, Leland, NC 28451
5. Graduate Food and Pub – 8334 Pineville Matthews Road, Suite 101, Pineville, NC 28226
6. High House Food Mart – 832 Old Apex Road, Cary, NC 27513
7. K and M Corner Stop – 440 Kerr Street, Concord, NC 28205
8. Kangaroo Express 215 – 101 East King Street, King, NC 27021
9. Kangaroo Express 250 – 379 Shawneehaw Avenue, Banner Elk, NC 28604
10. Circle K Store 5109 – 4474 Randolph Road, Charlotte, NC 28211
11. Sun Do Kwik Shop – 2935 East 5th Street, Lumberton, NC 28358
12. Wine Vault – 9009-1 J M Keynes Drive, Charlotte, NC 28262
13. Circle K 7930 – 3700 Groomstown Road, Greensboro, NC 27407
14. Han Dee Hugos 29 – 820 North College Road, Wilmington, NC 28405
15. Kerr Drug 427 – 9650 Strickland Road, Suite 105, Raleigh, NC 27615
16. Sheetz – 4319 West Wendover Avenue, Greensboro, NC 27407
17. Spot – 2267 Smokey Park Hwy., Candler, NC 28715
18. Wilco 108 – 3331 Thomasville Road, Winston-Salem, NC 27107
19. Cigarette City – 3723 North Croatan Hwy. – Unit 4-D, Kitty Hawk, NC 27947
20. Market Express – 4303 Old Monroe Road, Indian Trail, NC 28079
21. Switzerland Café and General Store – 9440 Hwy 226-A, Little Switzerland, NC 28749
22. Winn Dixie Store 2108 – 4400 Potter Road, Stallings, NC 28105
23. Plantation Market Amoco – 3040 Weddington Road, Matthews, NC 28105
24. Nawab Indian Cuisine – 129 South Stratford Road, Winston-Salem, NC 27104
25. Wilco 387 – 1425 South Main Street, Laurinburg, NC 28352
26. Rose Mart 6 – 3801 North Nash Street, Wilson, NC 27893
27. Rite Stop – 801 East 11th Street, Siler City, NC 27344
28. Spivey Mountain Grocery – 460 Johnson School Road, Asheville, NC 28806
29. Wilco 397 – 1221 US 117 South, Goldsboro, NC 27530
30. Wilco 390 – 502 SW Greenville Boulevard, Greenville, NC 27834

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases, with the exception of 1st Offense Case # 14 – Han Dee Hugos 29, which was ratified earlier. Seconded by Commissioner Wright. So Ordered.

III. ABC STORE LOCATION – CURRITUCK COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the relocation of an ABC store in Grady, North Carolina. On March 22, 2005, the ABC Commission received a letter from Currituck County ABC Board Supervisor David A. Collins requesting permission to relocate the Grady ABC store. On March 22, 2005, the ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed location, and on April 8, 2005, ALE Agent G. Pat Forbis began the investigation.

The proposed store would be a self-service store and that the reason for the ABC system to relocate was that their facility needed updating. The new proposed location would be safer and cleaner. Four Horseman LLC currently owns the proposed property, and the purchase price for the property is 1.25 million dollars. The investigation found no conflict of interest between the local ABC Board members or employees and the property owner.

The nearest church is the Mount Zion United Methodist Church, located .3 miles south from the proposed location. The nearest school is the Dr. W. T. Griggs Elementary School, located 4.1 miles from the proposed location. There is also a daycare business named Pledger Palace, which .2 miles south of the proposed ABC Store.

Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property on March 23, 2005. To date no objections have been received.

Mr. Herring recommended that the ABC Commission approve the site.

Chairman Fox made a motion to approve the request. Seconded by Commissioner Wright. So Ordered.

IV. ABC STORE LOCATION – ROWAN COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Kannapolis, North Carolina. On March 23, 2005, the ABC Commission received a letter from Rowan County ABC Board General Manager Terry Osbourne requesting approval to open a ABC store in Kannapolis, North Carolina. On March 31, 2005, the ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed location, and on April 4, 2005, ALE Supervisor Richard Griffin began the investigation.

The Rowan County ABC Board plans to lease space at 354 Oak Avenue Mall Drive, Kannapolis, NC located in Oak Avenue Mall and is currently in negotiations with the landlord, Atlantic American Properties, Inc. to lease the building for two years for \$13,244.00 a year. The proposed site will operate as a self-serve location.

The nearest church is First Presbyterian of Kannapolis and is .2 miles from the proposed location. The nearest school is A. L. Brown High School and located .8 miles from the proposed location.

Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property on March 29, 2005, to date no written objections have been received, however the

Commission did receive two phones from some citizens in the area. They were concerned about an ABC Store in their community. Mr. Herring stated that he informed them that they could come before the Commission or write us letters to address their concerns. However no one showed up at the Commission meeting to do so.

Mr. Herring recommended that the ABC Commission approve the proposed location.

Chairman Fox made a motion to approve the request. Seconded by Commissioner Wright. So Ordered.

V. OTHER BUSINESS

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division